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COLUMBIA, SOUTH CAROLINA

October 28, 2013

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VIA ELECTRONIC FILING

Jocelyn Boyd, Chief Clerk of the Commission
Public Service Commission of South Carolina
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Columbia, South Carolina 29211

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**Re: SCTC Petition to Modify Alternative Regulation Plans filed pursuant to S.C.
Code Ann. § 58-9-576(B) to take into Account Recent Action by the FCC
Docket No. 2013-55-C**

Dear Ms. Boyd:

Enclosed for filing is the Request of the SC Cable Television Association for The Commission to take Judicial Notice of Certain Filings. By copy of this letter we are serving the same on the parties of record. Should you have any questions, please contact me.

Yours truly,

ROBINSON, MCFADDEN & MOORE, P.C.

Frank R. Ellerbe, III

/tch
Enclosure
cc/enc:

F. David Butler, Standing Hearing Officer (via email)
M. John Bowen, Jr., Esquire (via email and US Mail)
Margaret M. Fox, Esquire (via email and US Mail)
Nanette S. Edwards, Esquire (via email and US Mail)
Scott Elliott, Esquire (via email and US Mail)
Jeanne W. Stockman, Esquire (via email and US Mail)
Steven W. Hamm, Esquire (via email and US Mail)
C. Jo Anne Wessigner Hill, Esquire (via email and US Mail)
Patrick W. Turner, Esquire (via email and US Mail)
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Burnet R. Maybank, III, Esquire (via email and US Mail)
John M. S. Hoefer, Esquire (via email and US Mail)
Benjamin P. Mustian, Esquire (via email and US Mail)

**BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA**

DOCKET NO. 2013-55-C

In Re:)	
)	
South Carolina Telephone Coalition Petition)	Request of the SC Cable Television
to Modify Alternative Regulation Plans Filed)	Association for The Commission to
Pursuant to S.C. Code Ann. § 58-9-576(B) to)	take Judicial Notice of Certain Filings
Take Into Account Recent Action by the)	
Federal Communications Commission)	
)	
)	

Pursuant to R. 103-846 (C) of the Commission’s Rules of Practice and Procedure and Rule 201 of the South Carolina Rules of Evidence, the South Carolina Cable Television Association (“SCCTA”) requests that the Commission take judicial notice of documents that were filed with the Commission by the Office of Regulatory Staff (“ORS”) on May 3, 2013 in ND 2013-6-C. A copy of the ORS cover letter is attached as Exhibit A.¹ By this motion SCCTA seeks to have the Commission take judicial notice of the following documents that were filed in ND 2013-6-C:

- The July 12, 2012 ILEC annual reports filed with the ORS;
- The surrogate cost information provided to ORS by the incumbent local exchange carriers.

SCCTA submits that the Commission should take judicial notice of these documents because they are highly relevant to the matters being considered in this docket and because they are the type of documents that are appropriate for judicial notice.

¹ The documents filed by ORS on May 3 were accompanied by an ORS motion that they be treated as confidential. On May 8, 2013 Standing Hearing Officer David Butler granted the motion. At this time SCCTA does not seek to have the documents treated as public documents.

The ILEC Annual Reports and Cost Studies are Relevant

In this docket the Commission is currently considering a motion by the SCCTA to reduce USF payments to six RLECs that raised their rates for basic local service. The Commission heard oral arguments on the motion on September 11, 2013. In support of their position that the SCCTA motion should be denied the RLECs made the following argument describing and relying on the process by which they file their annual reports:

And that's the mechanism that the Commission set up to make sure that you had good oversight and to make sure that, as the fund moved along, the companies that were trying to draw money out of the USF were not drawing too much money, and it gave you the continuation of the – like I say – the oversight and review and control over the fund.

Now, as your administrator, what's happened is when you transferred that to the ORS, that's what ORS does now. That's the reason for the annual reports that are filed with the ORS and all of those type of things, to be sure that the mechanism works.

Tr. p.47, lines 1 - 14. During the oral argument there were additional references to the annual filings made by the RLECs. Tr. p.48, lines 5-15; p. 61, line 7 through p.63, line 5; p.76, line 23 through p.80, line 12; p.82, line 10 through p. 84, line 25. There were also specific references to the surrogate cost studies. See Tr. p.61, line 25 through p.62, line 22; p.83, line 22 through p. 84, line 12. Because the RLECs directly relied on their annual filings as a basis for opposing the motion, and because of the extensive discussion of the reports and the new surrogate cost studies that the RLECs submitted to ORS, the 2012 annual filings and the 2013 surrogate cost studies are relevant and the Commission should take judicial notice of them.

The 2012 Annual Reports and 2013 Surrogate Cost Studies are the Type of Documents That Are Appropriate for Judicial Notice

R. 103-846 is the Commission's rule on evidence. It explicitly incorporates the South Carolina Rules of Evidence in subsection (A). Subsection (C) of R. 103-846

specifically provides that the Commission may take notice of judicially cognizable facts. The documents of which judicial notice is sought in this instance are documents that are in the files of the Commission. Documents in the records of the court are frequently the subject of judicial notice. See Colonial Penn Insurance Co. v. Coil, 887 F.2d 1236 (4th Cir. 1989) citing Wright and Graham, Federal Practice and Procedure: Evidence §5106 (“We note that the most frequent use of judicial notice of ascertainable facts is in noticing the content of court records.”) In the Colonial Penn case, while the case was on appeal, the Fourth Circuit took judicial notice of a guilty plea in an arson case to allow an insurance company to reopen a fire insurance settlement the company had previously agreed to.

In Freeman v. McBee, 280 S.C. 490, 494, 313 S.E.2d 325 (Ct. App. 1984) the S.C. Court of Appeals held that “[a] court can take judicial notice of its own records, files and proceedings for all proper purposes including facts established in its records.” In that case the Court of Appeals approved of the trial court having taken judicial notice of the records of a previous case between the parties in order to determine that certain claims had been previously adjudicated. A similar result was reached by the court in Whitt v. Wells Fargo Financial, 664 F.Supp2d 537 (D.S.C. 2009), where a review of the court records from a related case supported a ruling that certain claims were barred by collateral estoppel.

In the present matter it is important that the Commission review the records in its files to evaluate the argument advanced by the RLECs in opposing the SCCTA motion. The RLECs should have no basis for objecting to notice being taken of these documents since they were prepared and filed by the RLECs and are part of the “mechanism” by

which the Commission oversees the operation of the USF according to the RLECs' argument.

Timing of Request

R. 103-846(C) provides that all parties must be given an opportunity to contest the material proposed to be noticed. Rule 201(e) of the S.C. Rules of Evidence also provides that parties must be given an opportunity to be heard on the propriety of the request for judicial notice. Rule 201(f) provides that judicial notice may be taken at any stage of the proceeding. The SCCTA request for judicial notice is being made well prior to the November 15, 2013 deadline for the submission of briefs and proposed orders. Any party that opposes the request will have sufficient notice and opportunity to explain their opposition.

For the reasons explained in this memorandum the SCCTA requests that the Commission take judicial notice of the 2012 ILEC annual reports and 2013 surrogate cost studies filed in ND 2013-6-C.

Dated this 28th day of October, 2013.

ROBINSON, MCFADDEN & MOORE, P.C.



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Attorneys for South Carolina
Cable Television Association

**BEFORE
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DOCKET NO. 2013-55-C

In Re:)	
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South Carolina Telephone Coalition Petition)	Request of the SC Cable Television
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Pursuant to S.C. Code Ann. § 58-9-576(B) to)	take Judicial Notice of Certain Filings
Take Into Account Recent Action by the)	
Federal Communications Commission)	
)	
_____)	

EXHIBIT A

C. DUKES SCOTT
EXECUTIVE DIRECTOR

1401 Main Street, Suite 900
Columbia, SC 29201



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DAN F. ARNETT
CHIEF OF STAFF

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Nanette S. Edwards
Chief Counsel and Director of Legal Services

May 3, 2013

VIA HAND DELIVERY

Jocelyn G. Boyd, Esquire
Chief Clerk & Administrator
Public Service Commission of South Carolina
101 Executive Center Drive, Suite 100
Columbia, South Carolina 29210

Re: State Universal Service Fund ("State USF")
NDI 2013-6-C

Dear Ms. Boyd:

Pursuant to Commission Order No. 2013-243 the following additional information and recommendation is provided:

1. The July 2012 ILEC annual data reports filed with Office of Regulatory Staff ("ORS"). (Exhibit One)
2. The surrogate cost information provided to ORS by the incumbent local exchange carriers ("ILECs"). (Exhibit Two)
3. ORS respectfully submits that no "overpayment" has been made as all disbursements are pursuant to the current and effective Commission orders and are consistent with the amounts disbursed by the Commission prior to ORS becoming the Fund Administrator. Based on the present orders of the Commission, the fact that support exceeds the cost from the original cost studies approved by the Commission, does not impact the amount of disbursement and ORS recommends that the Commission issue its Order so finding.

Very truly yours,

Nanette S. Edwards

NSE/fes

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PUBLIC SERVICE
COMMISSION

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OF SOUTH CAROLINA**

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Federal Communications Commission)
_____)

CERTIFICATE OF SERVICE

This is to certify that I, Toni C. Hawkins, a Paralegal with the law firm of Robinson, McFadden & Moore, P.C., have this day caused to be served upon the persons named below the **Request of the SC Cable Television Association for The Commission to take Judicial Notice of Certain Filings** in the foregoing matter by placing a copy of same in the United States Mail, postage prepaid, in an envelope addressed as follows:

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Benjamin P. Mustian, Esquire
Willoughby & Hoefer, PA
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Columbia, SC 29202

Dated at Columbia, South Carolina this 28th day of October, 2013.



Toni C. Hawkins